



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1636

Introduced 2/23/2005, by Sen. Bill Brady

SYNOPSIS AS INTRODUCED:

New Act
225 ILCS 60/29

from Ch. 111, par. 4400-29

Creates the Affordable Health Care Act and amends the Medical Practice Act of 1987. Provides that the Affordable Health Care Act applies to and governs all health care agreements between a patient and a health care provider that (A) voluntarily limit economic damages or non-economic damages arising out of (i) injuries alleged to have been received by a person as the result of medical negligence, or (ii) the death of a person, due to alleged medical negligence of a health care provider or (B) contractually obligate the plaintiff in a medical negligence lawsuit to pay the defendants' reasonable legal fees, including costs and expenses, if the lawsuit fails to establish liability on the part of the defendants. Sets forth conditions to which health care agreements are subject, and requires that such agreements contain a notice to patients. Provides for the termination of health care agreements. Provides that no patient with an emergency medical condition shall be asked to enter into a health care agreement until after stabilization of the patient's condition. Prohibits certain types of threats to health care providers, and makes a violation of those provisions a Class A misdemeanor. Provides that a health care agreement that complies with the Affordable Health Care Act does not violate the provisions of the Medical Practice Act of 1987 concerning certain prohibited contracts or agreements and is not void or against the public policy of the State of Illinois.

LRB094 09981 DRJ 40239 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Affordable Health Care Act.

6 Section 5. Findings and purpose.

7 (a) The General Assembly recognizes that many consumers of
8 health care services experience difficulty in trying to find
9 and obtain affordable health care services. The General
10 Assembly finds that many consumers of health care services
11 experience high out-of-pocket costs when receiving those
12 services. The General Assembly also finds that consumers should
13 have the right to voluntarily contract with and negotiate with
14 their health care providers in ways to decrease their
15 out-of-pocket costs for health care services.

16 The General Assembly acknowledges that jury awards in
17 Illinois have increased substantially, far in excess of the
18 rate of inflation or the consumer price index. Medical
19 malpractice liability insurance costs have increased
20 dramatically, causing physicians to leave the State, retire
21 early, and discontinue providing certain medical services. The
22 fear of jury awards in excess of a physician's professional
23 medical malpractice insurance policy limits is dramatically
24 and negatively affecting access to health care in the State.
25 Threats of a potential jury award above a physician's policy
26 limits are often used to coerce physicians into out-of-court
27 settlements. These fears are placing physicians in an
28 adversarial relationship with their patients. The General
29 Assembly finds this is contrary to the best interest of the
30 citizens of the State of Illinois.

31 Furthermore, the General Assembly acknowledges that many
32 health care providers order expensive diagnostic medical tests

1 and procedures on consumers based on the assumption that these
2 tests and procedures will decrease potential liability in the
3 event a claim is filed against them based upon allegations of
4 medical negligence. This unnecessarily increases the overall
5 costs for health care services. Health care providers are
6 experiencing difficulty in finding affordable medical
7 liability insurance because many insurance companies have
8 discontinued selling medical liability insurance in this
9 State. Many geographic areas of the State are unable to attract
10 health care providers, resulting in limited access to health
11 care services, due to the lack of affordable medical liability
12 insurance.

13 Allegations of medical negligence often include requests
14 for economic damages and non-economic damages such as pain and
15 suffering. The possibility of awards for economic damages and
16 non-economic damages have resulted in many insurance companies
17 discontinuing business operations in the State. This has
18 limited access to affordable medical liability insurance and
19 resulted in higher costs for liability insurance, which are
20 ultimately passed on to the consumers of health care services.
21 Inability to obtain affordable medical malpractice liability
22 insurance has resulted in many health care providers
23 discontinuing the provision of high risk medical services,
24 leaving the State, and discontinuing the provision of medical
25 services altogether.

26 (b) This Act is intended to:

27 (1) Specifically authorize the right of consumers to
28 voluntarily contract with health care providers in an
29 attempt to lower their costs for health care services by
30 entering into agreements that voluntarily limit the amount
31 of economic or non-economic damages, or both, that may be
32 recovered in a medical negligence lawsuit, or that
33 contractually obligate the plaintiff in a medical
34 negligence lawsuit to pay the defendants' reasonable legal
35 fees, including costs and expenses, if the lawsuit fails to
36 establish liability on the part of the defendants.

1 (2) Improve the overall quality of care delivered to
2 the public by health care providers throughout the State.

3 (3) Improve access to health care services by allowing
4 consumers and health care providers to voluntarily enter
5 into agreements, thereby encouraging health care providers
6 to continue to offer services in this State.

7 (4) Lower the overall cost of health care services by
8 reducing the number and amount of unnecessary diagnostic
9 tests and procedures that are performed on patients based
10 on the theory of "defensive medicine".

11 (5) Encourage health care providers to offer and
12 provide services in geographic areas of the State that have
13 traditionally been underserved or experienced shortages in
14 qualified health care providers.

15 Section 10. Definitions. In this Act:

16 "Consumer" means any person, individual, corporation,
17 association, partnership, limited liability company, sole
18 proprietorship, or other legal entity.

19 "Economic damages" means objectively verifiable monetary
20 losses incurred as a result of the provision of, use of, or
21 payment for health care services or medical products, such as
22 past and future medical expenses, loss of past and future
23 earnings, cost of obtaining domestic services, loss of
24 employment, and loss of business or employment opportunities.

25 "Effective date" means the date on which a health care
26 agreement becomes effective and binds the parties to the terms
27 of the agreement.

28 "Emergency medical condition" means a medical condition
29 manifesting itself by acute symptoms of sufficient severity
30 (including, but not limited to, severe pain) such that a
31 prudent layperson, who possesses an average knowledge of health
32 and medicine, could reasonably expect the absence of immediate
33 medical attention to result in:

34 (1) placing the health of the individual (or, with
35 respect to a pregnant woman, the health of the woman or her

1 unborn child) in serious jeopardy;

2 (2) serious impairment to bodily functions; or

3 (3) serious dysfunction of any bodily organ or part.

4 "Emergency services" means medical services furnished by a
5 health care provider that are needed to evaluate or stabilize
6 an emergency medical condition. "Emergency services" does not
7 refer to post-stabilization medical services.

8 "Group of health care providers" means any group,
9 association, partnership, corporation, limited liability
10 company, limited liability partnership, organization, or
11 collection of health care providers that provide health care
12 services to the general public or perform business operations
13 under a common business name.

14 "Health care agreement" means a written agreement entered
15 into between a patient and a health care provider that (A)
16 prohibits or limits economic damages or non-economic damages
17 arising out of (i) injuries alleged to have been received by a
18 patient as the result of medical negligence or (ii) the death
19 of a patient, due to alleged medical negligence services
20 provided by a health care provider or (B) contractually
21 obligates the plaintiff in a medical negligence lawsuit to pay
22 the defendants' reasonable legal fees, including costs and
23 expenses, if the lawsuit fails to establish liability on the
24 part of the defendants.

25 "Health care provider" means any physician, nurse,
26 licensed advanced practice nurse, licensed physician
27 assistant, chiropractor, licensed hospital facility, licensed
28 ambulatory surgery center, or other person that is licensed or
29 otherwise authorized to provide or deliver health care
30 services.

31 "Health care service" means any service provided to a
32 person by a health care provider that relates to, or is for the
33 purpose of, preventing, alleviating, curing, or healing human
34 illness or injury.

35 "Non-economic damages" means damages for physical and
36 emotional pain, suffering, inconvenience, physical impairment,

1 mental anguish, disfigurement, loss of enjoyment of life, loss
2 of society and companionship, loss of consortium, hedonic
3 damages, injury to reputation, and all other non-pecuniary
4 losses of any kind or nature.

5 "Nurse" means a person licensed under the Nursing and
6 Advanced Practice Nursing Act.

7 "Party" means any person who is a plaintiff or a defendant
8 in a medical negligence lawsuit.

9 "Patient" means any person who receives health care
10 services from a health care provider.

11 "Person" means any individual, corporation, association,
12 partnership, limited liability company, sole proprietorship,
13 or any other legal entity.

14 "Physician" means a person licensed under the Medical
15 Practice Act of 1987 to practice medicine in all of its
16 branches or a chiropractic physician licensed to treat human
17 ailments without the use of drugs and without operative
18 surgery.

19 "Post-stabilization medical services" means health care
20 services furnished by a health care provider to a patient after
21 stabilization of an emergency medical condition.

22 "Stabilization" means, with respect to an emergency
23 medical condition, to provide such medical treatment of the
24 condition as may be necessary to ensure, within reasonable
25 medical probability, that no material deterioration of the
26 condition is likely to result.

27 "Termination date" means the date after which a health care
28 agreement becomes terminated and no longer binds the parties to
29 the agreement.

30 Section 15. Applicability. This Act shall apply to and
31 shall govern all health care agreements between a patient and a
32 health care provider that (A) voluntarily limit economic
33 damages or non-economic damages arising out of (i) injuries
34 alleged to have been received by a person as the result of
35 medical negligence, or (ii) the death of a person, due to

1 alleged medical negligence of a health care provider or (B)
2 contractually obligate the plaintiff in a medical negligence
3 lawsuit to pay the defendants' reasonable legal fees, including
4 costs and expenses, if the lawsuit fails to establish liability
5 on the part of the defendants.

6 Section 20. Minor parties. A minor child shall be bound by
7 a health care agreement executed on his or her behalf by any
8 parent or legal guardian of the minor child. A minor child
9 shall be bound by such an agreement irrespective of whether
10 that parent is also a minor. A minor child shall be bound by a
11 health care agreement executed on his or her behalf
12 irrespective of whether the agreement was entered into before
13 the birth of the minor child. An agreement so executed shall
14 not be voidable because of the minority of the parent, and for
15 such purposes a minor who is a parent shall be deemed to have
16 the full legal capacity as if that parent were above the age of
17 majority.

18 Section 25. Conditions. Every health care agreement shall
19 be subject to all of the following conditions:

20 (1) The agreement shall be voluntarily executed by the
21 patient receiving health care services or the patient's
22 legal parent or guardian prior to, during, or after the
23 term of provision of services by a health care provider.

24 (2) The agreement must be a separate instrument
25 complete in itself and not a part of any other contract or
26 instrument.

27 (3) The agreement may not limit, impair, or waive any
28 substantive rights or defenses of any patient, other than
29 the right of a patient to (A) allege damages and receive an
30 award for economic damages or non-economic damages in a
31 medical negligence lawsuit or (B) contractually obligate
32 the plaintiff in a medical negligence lawsuit to pay the
33 defendants' reasonable legal fees, including costs and
34 expenses, if the lawsuit fails to establish liability on

1 the part of the defendants.

2 (4) The agreement may not limit, impair, or waive the
3 procedural rights to be heard, to present material
4 evidence, to cross-examine witnesses, and to be
5 represented by an attorney, or other procedural rights of
6 due process of any party.

7 (5) The original agreement may be in written or
8 electronic format, and any patient executing such an
9 agreement shall be given a copy of the signed agreement
10 immediately after executing the agreement or at any time
11 when requested by the patient.

12 (6) The agreement shall remain in effect and shall
13 apply to all health care services provided to the patient
14 on or after the effective date by the health care provider
15 or providers who is, or are, a party to the agreement.

16 (7) The agreement shall include an effective date
17 clearly indicating the date the agreement is to become
18 effective; the effective date may be a date prior to the
19 date the agreement is executed.

20 (8) The agreement may be amended to include additional
21 health care providers with the written consent of the
22 patient, by including a written amendment with the names of
23 the additional health care providers and the effective date
24 or dates of the amendment.

25 (9) The agreement may be terminated by the patient at
26 any time by notifying the health care provider in writing
27 via certified mail, return receipt requested, at the
28 address listed on the original agreement, and the
29 termination shall become effective on the date the
30 termination letter is postmarked by the United States
31 Postal Service.

32 (10) Notwithstanding any other provision in this Act,
33 an agreement under this Act may limit economic damages only
34 to the extent those damages exceed \$500,000.

35 Section 30. Termination of a health care agreement. Any

1 health care agreement subject to this Act may be terminated at
2 any time by the patient by notifying the health care provider
3 in writing via certified mail, return receipt requested, at the
4 address listed on the original agreement, and the termination
5 shall become effective on the date the termination letter is
6 postmarked by the United States Postal Service. After the
7 termination date of a health care agreement, a patient shall
8 not be subject to any limitations on economic damages or
9 non-economic damages for claims based on medical negligence for
10 health care services provided after the termination date.
11 Health care services provided to a patient by a health care
12 provider prior to the termination date of a health care
13 agreement shall be subject to the limitations regarding
14 economic damages or non-economic damages contained in the
15 agreement, and the plaintiff in a medical negligence lawsuit
16 shall be contractually obligated to pay the defendants'
17 reasonable legal fees, including costs and expenses, if the
18 lawsuit fails to establish liability on the part of the
19 defendants in the agreement.

20 Section 35. Emergencies. No patient with an emergency
21 medical condition shall be asked to enter into a health care
22 agreement until after stabilization of the patient's
23 condition. Nothing contained in this Act shall prohibit a
24 health care provider from entering into a health care agreement
25 with a patient after stabilization of the emergency medical
26 condition or while providing post-stabilization medical
27 services.

28 Section 40. Groups of health care providers. Any patient
29 may enter into a health care agreement with a group of health
30 care providers by including the name of the group on the
31 agreement. The terms of the agreement shall apply to the
32 patient and all members of the group, irrespective of whether
33 the individual members of the group of health providers sign
34 the agreement. A health care agreement signed by a patient and

1 any authorized representative of a group of health care
2 providers shall apply to each and every member of the group,
3 thereby restricting or limiting a patient's right to economic
4 damages or non-economic damages that may result from negligence
5 caused by any member of the group.

6 Section 45. Hospitalization. A patient may sign a health
7 care agreement with a hospital that limits or restricts a
8 patient's right to economic damages or non-economic damages or
9 that contractually obligates the plaintiff in a medical
10 negligence lawsuit to pay the defendants' reasonable legal
11 fees, including costs and expenses, and the agreement may
12 include language that applies to all health care providers who
13 provide health care services to the patient during
14 hospitalizations up to and through discharge from the hospital,
15 irrespective of whether those health care providers are
16 employees, agents, or representatives of the hospital.

17 Section 50. Required language. Every health care agreement
18 shall contain, immediately above the signature lines, in
19 upper-case type in printed letters of at least 3/16-inch
20 height, captions and a paragraph as follows:

21 AGREEMENT LIMITING DAMAGES IN NEGLIGENCE CLAIMS AND BINDING THE
22 PLAINTIFF TO PAY THE DEFENDANTS' LEGAL FEES IN THE EVENT OF A
23 TRIAL

24 NOTICE TO PATIENT

25 BY SIGNING THIS AGREEMENT, YOU ARE LIMITING YOUR RIGHT
26 TO DAMAGES THAT MAY RESULT FROM NEGLIGENCE DURING YOUR
27 TREATMENT OR CARE BY THE HEALTH CARE PROVIDER OR GROUP OF
28 HEALTH CARE PROVIDERS LISTED BELOW. YOU ARE ALSO ENTERING INTO
29 AN AGREEMENT THAT WILL OBLIGATE THE PLAINTIFF TO PAY THE
30 DEFENDANTS' REASONABLE LEGAL FEES, INCLUDING COSTS AND
31 EXPENSES, IN THE EVENT OF A TRIAL, IF AT TRIAL THE JURY FAILS
32 TO ESTABLISH LIABILITY ON THE PART OF THE DEFENDANTS. THIS
33 AGREEMENT MAY BE TERMINATED BY YOU AT ANY TIME BY SENDING A
34 WRITTEN NOTICE VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO

1 YOUR HEALTH CARE PROVIDER AT THE ADDRESS LISTED BELOW. HEALTH
2 CARE SERVICES PROVIDED TO YOU AFTER TERMINATION OF THIS
3 AGREEMENT SHALL NOT BE SUBJECT TO DAMAGE LIMITATIONS FOR CLAIMS
4 BASED ON ALLEGATIONS OF NEGLIGENCE. ALL HEALTH CARE SERVICES
5 PROVIDED TO YOU AFTER SIGNING THIS DOCUMENT SHALL BE SUBJECT TO
6 THE LIMITATIONS FOR DAMAGES CONTAINED IN THIS AGREEMENT AND
7 SHALL OBLIGATE YOU TO PAY THE DEFENDANTS' LEGAL COSTS AND
8 EXPENSES IF YOU FAIL TO ESTABLISH DEFENDANTS' LIABILITY AT
9 TRIAL. IF YOU HAVE QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD
10 CONTACT AN ATTORNEY TO DISCUSS THE LEGAL CONSEQUENCES OF
11 SIGNING THIS DOCUMENT.

12 Section 55. Admissibility as evidence. A health care
13 agreement subject to this Act shall be admissible as evidence
14 in any court, mediation panel, or arbitration hearing or before
15 any tribunal, board, agency, or person. Any person challenging
16 the validity of a health care agreement shall have the burden
17 of proving that the agreement was not voluntarily entered into
18 or that consent to the agreement was based on willful and
19 wanton fraud or deceit.

20 Section 60. Threats to health care providers. No person,
21 attorney, agent, or representative shall orally, or in writing,
22 attempt to coerce, threaten, intimidate, or extort another
23 person to induce settlement of a medical negligence lawsuit by
24 referring to, implying, or stating the plaintiff will seek
25 damages in excess of a health care provider's medical
26 malpractice liability insurance policy limits. No person,
27 attorney, agent, or representative shall orally, or in writing,
28 attempt to coerce, threaten, intimidate, or extort another
29 person to induce settlement of a medical negligence lawsuit by
30 referring to, implying, or stating the plaintiff will seek the
31 health care provider's personal assets to satisfy any judgment
32 rendered in a medical negligence lawsuit. Any person convicted
33 of violating any of the provisions of this Section 60 is guilty
34 of a Class A misdemeanor.

1 Section 90. The Medical Practice Act of 1987 is amended by
2 changing Section 29 as follows:

3 (225 ILCS 60/29) (from Ch. 111, par. 4400-29)

4 (Section scheduled to be repealed on January 1, 2007)

5 Sec. 29. Except as otherwise provided in this Section, any
6 contract or agreement signed by any person prior to, or as a
7 condition of, such person receiving medical treatment in any
8 form, which releases from liability any physician, hospital or
9 other health care provider for any malfeasance, misfeasance or
10 nonfeasance in the course of administering any medical
11 treatment or service is void and against the public policy of
12 the State of Illinois. A health care agreement that complies
13 with the Affordable Health Care Act does not violate this
14 Section and is not void or against the public policy of the
15 State of Illinois.

16 (Source: P.A. 85-4.)